> Compensation of severe third party motor liability bodily injury claims in France

Analysis using CCR RE database 2016
THE CONCEPT OF FULL REPARATION

is a guiding principle in the compensation of bodily injuries and implies that the person responsible for the injuries must compensate the loss in its entirety and solely the loss, without privation or enrichment of the victim.

In contrast to its European partners, the French market is characterized by a constant spiral of severe bodily injury compensation costs primarily due to the absence of compensation tables, to the multiplicity of capitalization tables for future losses and to the unfettered discretionary powers of French magistrates.

Accordingly, since reforming the direct payment by third-party payers in December 2006, several discussions have been conducted and legislative proposals drafted in the aim of furthering the understanding of the principle of full reparation and evolving toward the harmonization of assessment tools and of compensation systems for bodily injury.

Some improvements, such as the implementation of a compensation toolkit, were prescribed by insurers in their “White paper” published in 2008 or had been put into place in the framework of the Lefrand Law Project of 2010.

More recently, the draft bill on the reform of third-party liability insurance, proposed by the Minister of Justice (Garde des Sceaux) in April 2016, introduced major rules relating to the compensation of bodily injuries within the French Civil Code.

In addition to the introduction of jurisprudence rules, the bill embodied recommendations aimed at furthering the equal treatment of victims, at harmonizing compensation payments and at significantly improving the certainty of bodily injury compensation costs.

It is therefore recommended to formalize a classification of the heads of loss, a universal medical scale, a repository indicative of compensation provided for non-economic losses, a regulatory capitalization table and a generalization of the principle of compensation in the form of the annuity payment of future losses (third-party assistance, future loss of earnings and loss of income by the victim’s family circle).

Likewise, this preliminary draft serves to confirm the vital importance of reparation in kind, as insurers already provide victims with assistance services and support in returning to work.

The aim of this study is to establish an objective report on the development of the foreseeable cost of severe bodily injury claims in France on the basis of the assessments that have been recorded in our database since 2005. It is an update that supplements the study conducted in 2012.
Motor bodily injury liability; **Key figures**

Each year, motor liability insurers pay upwards of €4.35 billion to bodily injured victims.

- **2%** of the total number of motor claims*
- **3,000** victims with a physical and psychological injuries (AIPP) rate > 20%*
- **177** victims receive compensation in excess of €1.5 m**
- **33%** of the total cost of motor claims*
- **58%** pay rate for motor bodily injury liability
- **€780 million** in compensation paid to victims in the over €1.5 m category**
- **€4,350 million** in compensation paid to victims*

**Sources:**
*French Insurance Association study, December 2015, The motor insurance market in 2014*
**French Insurance Association study, June 2015, Motor insurance: bodily injury claims in 2013*

CCR Re and motor bodily injury liability in France

More than **29 treaties / 50 cedents** in the motor liability line in France in 2015, representing over **60%** of the motor market

- **€17.9 m premiums in 2015** (of an approximate total of €420 m for Open Market Reinsurance)
- **€245 m motor bodily injury liability reserves** in 2015
  Duration: 10 years
- **€7.8 m motor liability insurance payments** in 2015
- **A motor bodily injury liability claims database** updated since 2005
Scope of the study

This study covers victims who have filed major motor bodily injury claims and for whom:

- The total amount of the bodily injury claim is estimated at €1 m or more at December 31, 2015

The study analyzes data that the Claims Department has input into the major claims database since 2005 on the basis of claim notices and other documents provided by cedents.

1,881 severe bodily injured victims (i.e. 490 victims more than the 2012 study)
out of 1,846 motor claims filed since January 1, 1999
(i.e. 1.2 severe bodily injured victims per claim)

199 compensated victims
(settled claims or closed reinsurance claims)

1,580 victims for whom payment of compensation continues
(ongoing claims or open reinsurance claims)

102 claims on which no action was taken (claim amount fell below the cedent’s retention)
Traffic safety results

The measures that the government has taken since 2005 to promote traffic safety, together with insurers’ accident prevention actions and improved reimbursement for severely injured victims have led to a drop in traffic fatalities, with the number falling below 3,500 in 2015.

<table>
<thead>
<tr>
<th>2015 final figures</th>
<th>Bodily injury accidents</th>
<th>Fatalities within 30 days</th>
<th>Injuries</th>
<th>Of which, injuries requiring hospitalization</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015 final figures</td>
<td>56,603</td>
<td>3,461</td>
<td>70,802</td>
<td>26,595</td>
</tr>
<tr>
<td>2005 final figures</td>
<td>84,525</td>
<td>5,318</td>
<td>108,076</td>
<td>39,811</td>
</tr>
<tr>
<td>2005-2015 development</td>
<td>-33.03%</td>
<td>-34.92%</td>
<td>-34.49%</td>
<td>-33.20%</td>
</tr>
</tbody>
</table>

* Source: National Road Safety Research Institute (ONISR), Traffic safety figures

Severe bodily injured victims

The number of bodily injury liability claims has fallen regularly since 1990

Source: French Insurance Association study, June 2015, Motor insurance: bodily injury claims in 2013
Loss development

Based on the CCR database:

Between 1999 and 2006, the number of major motor bodily injury liability claims increased by 90%. This trend is particularly striking because the layers of motor liability treaties have changed; the average retention has increased from €763,000 to €2.2 million.

Conversely, the number of cedents and the volume of premiums have increased. However, since 2007, there has been a steady decrease in the number of major claims on a comparable basis. This decrease may be explained by the increase in cedent retention levels.

Average estimate of severe bodily injured victims

(for whom the estimate has reached €1 m between 2005 and 2015)

Between 2005 and 2015, the average estimate of losses sustained by severe bodily injured victims rose by 89%, i.e. by 6.5% each year.
82% of severe injured victims sustain major cranial trauma or spinal cord injuries

- 82% of victims sustain major cranial trauma or spinal cord injuries (paraplegia, tetraplegia):
  - Major cranial trauma (59%) causes neuropsychological sequelae;
  - Spinal cord injuries (23%) break down into tetraplegia (paralysis of all four limbs) and paraplegia (more or less total paralysis of the two lower limbs).

The Physical and Psychological Injuries (AIPP) scale

- The Physical and Psychological Injuries (AIPP) scale provides medical experts with a tool for assessing the severity of bodily injuries on a scale of 0 to 100%. A Physical and Psychological Injury is defined as:
  - "a permanent reduction in physical, psychosensory or intellectual potential that is the result of an anatomo-physiological injury;
  - that can be detected medically and can therefore be assessed on the basis of appropriate clinical testing, supplemented by a study of additional tests;
  - that is compounded by pain phenomena and psychological impacts ordinarily associated with the described injuries, as well as consequences in everyday life that are customary and objectively associated with such injury."
The **AIPP rate** provides a measurement of the severity of bodily injury

### Examples:

<table>
<thead>
<tr>
<th>Function</th>
<th>Injury</th>
<th>AIPP rate (Concours Médical scale)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Visual acuity</strong></td>
<td>Loss of vision in one eye</td>
<td>25%</td>
</tr>
<tr>
<td></td>
<td>Loss of vision in both eyes (total blindness)</td>
<td>85%</td>
</tr>
<tr>
<td><strong>Upper limbs / lower limbs</strong></td>
<td>Loss of a thumb</td>
<td>22% (right) and 18% (left)</td>
</tr>
<tr>
<td></td>
<td>Amputation or paralysis of an arm</td>
<td>60% (right) and 50% (left)</td>
</tr>
<tr>
<td></td>
<td>Paraplegia</td>
<td>30% to 90% depending on the degree of the spinal cord injury</td>
</tr>
<tr>
<td><strong>Nervous system</strong></td>
<td>Hemiplegia</td>
<td>50% to 70%</td>
</tr>
<tr>
<td><strong>Cranial trauma</strong></td>
<td>Coma and skull fracture</td>
<td>Up to 100%</td>
</tr>
</tbody>
</table>

91% of victims have an **AIPP rate > 50%**

- 91% of victims have an **AIPP rate > 50%**.
- Furthermore, 53% of victims have an **AIPP rate > 80%**.
- Deceased victims account for only 2% of the total.

These figures must be viewed in light of injuries: nearly 82% of victims sustain major cranial trauma or spinal cord injuries (paraplegia, tetraplegia). Indeed, these injuries are often assessed using the **Concours Médical** scale and have an **AIPP rate of over 50%**.
70% of severe bodily injured victims are men

Men are therefore victims of the most severe claims (for which the estimate is > €1 m).

This over-representation of the male population may be explained by 2 main factors:

1. **INCOME**

   Men’s incomes are higher than women’s incomes and, therefore, men often receive greater compensation for loss of earnings;

2. **BEHAVIORAL FACTORS**

   In general, men underestimate the risks and/or are willing to take greater risks, particularly young men on two-wheeled vehicles or young male pedestrians.

   The risks associated with users of motorcycles, bicycles and scooters (driver and passenger) remain very high: 30% killed and 33% injured*. Motorcycle passengers are often very seriously injured.

   * source: French Road Safety Association (APR) 2015
41% of severe bodily injured victims are **passengers**

- **41% of severe injured victims are passengers**; 22% are pedestrians while drivers account for only 15% of severe victims.

- In fact, full compensation is provided for bodily injury losses sustained by passengers, pedestrians and cyclists while rights of driver victims may be limited or eliminated if the accident is his/her fault.

- Vehicle and motorcycle passengers are often severely injured. **Male passengers account for 22% of all victims.**
65% of victims are under the age of 30

As was the case in 2012, 65% of victims are under the age of 30 on the date of the accident. 30% of those victims were women and 70% were men. Most of the people in this age group are not members of the working population: they are schoolchildren, university students, etc.

This figure could minimize or obviate the income factor as a reason for the over-representation of males filing serious bodily injury claims.

However, in the 30 to 59 age range, the so-called “working population”, women account for 28% of victims compared with 72% for men. Therefore, income is indeed a factor in the over-representation of males filing severe bodily injury claims.

DISTRIBUTION (IN PERCENTAGE) OF VICTIMS BY AGE

DISTRIBUTION (IN PERCENTAGE) OF VICTIMS BY GENDER AND AGE
42% of victims are **students**

- Due to life expectancy, the younger the victim, the greater his/her needs for personal assistance as well as medical care and the higher his/her work-related losses.
- In the same manner, the higher the victim’s income the greater his/her work-related losses.

42% of victims are students. Out of this 42%: **61% are between the ages of 6 and 19**, 17% are under 5 years of age, and 16% are between 20 and 29.

9% of these victims are managerial employees, craftsmen or heads of companies. Out of this 9%: **50% are between 20 and 39**; 30% are between 40 and 49.
Implementing the Dintilhac classification

Since 2006, the actors involved in the compensation of bodily injury have adopted the Dintilhac classification. Although this classification has not been given official status by Parliament, the Ministry of Justice (circular of February 2, 2007) and insurers have strongly recommended that it be applied in order to ensure greater transparency and equity in the compensation of bodily injuries.

The Dintilhac classification lists and defines, in a non-exhaustive manner, the heads of loss that give rise to compensation, based on three factors:

1. direct victims / indirect victims;
2. economic losses / non-economic losses;
3. temporary losses / permanent losses respectively before or after the date on which injuries stabilize (date upon which the victim’s status may no longer be improved through medical treatment).

Most insurers have revised their claims notices accordingly and the estimate sheets we receive are established on the basis of the classification.

Therefore, the figures in this study are based on the Dintilhac classification.

The Badinter Act of July 5, 1985

Pursuant to the provisions of the Act of July 5, 1985, known as the Badinter Act, any victim of a traffic accident involving a land motor vehicle is entitled to compensation. The rights of non-driver victims may be limited or excluded only if the person concerned commits gross negligence that is the sole cause of the accident, or an intentional wrongful act (excluding victims ≥ the age of 70 or ≤ the age of 16, or who have an AIPP rate > 80%). Conversely, in the case of drivers, ordinary negligence may be asserted to reduce and, most frequently, to deny compensation.

The assessments given below are based on victims’ full compensation rights. In fact, compensation rights were reduced for only 4% of the 1,881 victims studied.
Economic losses account for 86% of the total estimate

**ECONOMIC LOSSES**

Economic losses are losses of a financial nature that correspond either to losses sustained or earnings foregone by the direct victim.

Examples: medical expenses, loss of earnings, third-party assistance, etc.

**NON-ECONOMIC LOSSES**

Non-economic losses are losses of a non-financial nature sustained by the direct victim.

Examples: pain and suffering, aesthetic loss, loss of amenity, etc.

**LOSSES SUSTAINED BY FAMILY CIRCLE**

In this study, losses of indirect victims include both economic losses (loss of income, miscellaneous expenses) and non-economic losses (loss of affection, loss of consortium) sustained by family members of the direct victim.

86% of the average estimate of losses sustained by victims concern actual or future economic losses.
3 heads of loss account for 73% of the total estimate

**Third-party assistance**

These costs concern expenditures for third-party assistance to help the victim perform everyday activities, ensure his/her safety, contribute to restoring his/her dignity and offset his/her loss of autonomy.

According to the Dintilhac classification, third-party assistance costs may be compensated by insurers under the **miscellaneous expenses** head of loss (for personal assistance required between the accident date and the date that injuries stabilize) and under the **third-party assistance** head of loss (after injuries stabilize).

The medical expert that examines the victim indicates whether personal assistance is necessary and whether it must be specialized (nurses, physical therapy...) or not. For non-specialized third-party assistance, he/she indicates what type of assistance is required (assistance with housework, everyday activities or simple monitoring...) as well as the number of “active” or “passive” hours of third-party assistance.

For victims with serious injuries, third-party assistance may be a particularly costly head of loss, especially in cases where the victims are young.
Third-party assistance accounts for 44% of the total estimate

- Between 2005 and 2015, the average estimate of third-party assistance increased by 68%, i.e. nearly +5.3% per year.
- Moreover, this head of loss alone accounts for 44% of the average total estimate of victims' losses.

### Development of Average Estimate (in Euros) of Assistance Per Third-Party and by Year of Estimate

<table>
<thead>
<tr>
<th>Year</th>
<th>Estimate (in Euros)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>1,427,488</td>
</tr>
<tr>
<td>2006</td>
<td>1,524,143</td>
</tr>
<tr>
<td>2007</td>
<td>1,574,414</td>
</tr>
<tr>
<td>2008</td>
<td>1,613,262</td>
</tr>
<tr>
<td>2009</td>
<td>1,721,693</td>
</tr>
<tr>
<td>2010</td>
<td>1,905,317</td>
</tr>
<tr>
<td>2011</td>
<td>1,919,910</td>
</tr>
<tr>
<td>2012</td>
<td>2,146,948</td>
</tr>
<tr>
<td>2013</td>
<td>2,146,948</td>
</tr>
<tr>
<td>2014</td>
<td>2,723,704</td>
</tr>
<tr>
<td>2015</td>
<td>2,723,704</td>
</tr>
</tbody>
</table>

Between 2005 and 2015, the average estimate of third-party assistance increased by 68%, i.e. nearly +5.3% per year. Moreover, this head of loss alone accounts for 44% of the average total estimate of victims’ losses.

### Several Factors Explain the Increase in the Estimate of Third-Party Assistance:

- The increase in hourly rates for both “active” and “passive” assistance;
- The increase in the number of hours for the most severe cases: more and more, the courts award victims 24-hour personal assistance (sometimes exceeding 24 hours) too often without taking account of the victim’s autonomy that may result from adaptations made in the home or to a vehicle and material assistance (distance monitoring, home automation systems...);
- A distinction is not always made between "active" third-party assistance time (bathing and dressing, meals, shopping, transfers...) and "passive" third-party assistance time (presence of a monitor, distance monitoring) for which the hourly rate is less. The courts tend to compensate third-party assistance on the basis of a single hourly rate for “active” assistance. Insurers include this risk in their estimate.
The average hourly rate for **“active” third-party assistance services** is €18

In 2015, the average estimate of the hourly rate for permanent assistance by a third-party was **18 euros for “active” assistance and 15 euros for “passive” assistance** (compared to 19 euros and 13 euros from our 2012 study).

This represents an increase between 2005 and 2015 of:

- +20% for “active” third-party assistance hourly rates, i.e. +1.8% per year;
- +36% for “passive” third-party assistance hourly rates, i.e. +3.1% per year.

The third-party assistance needs of hemiplegia or quadripareisis victims (who account for over 1% of the population studied) often exceed 24 hours per day.
> Compensation estimates

Average estimate of third-party assistance by type of injury

In 2015, the average estimate of third-party assistance is comparable for victims in a vegetative state or suffering from tetraplegia. This head of loss accounts for almost 53% of the total amount of the average estimate of losses for this category of victims.

The third-party assistance head of loss accounts for 49% of the total amount of the average estimate of losses for victims suffering from major cranial trauma.

It also accounts for 33% of the total amount of the average estimate of losses for a paraplegic victim.

Miscellaneous expenses

The "miscellaneous expenses" head of loss accounts for all expenses other than medical expenses sustained by the victim from the accident date to the date on which injuries stabilize:
- expenses incurred for specific non-work activities that the victim cannot perform due to a traumatic illness and for which he/she is obliged to contract service providers (child care, at-home medical care, actual assistance of a third-party, actual adaptation of a vehicle or the home, etc.),
- victim’s medical advisor fees (the victim has a right to the assistance of a physician when undergoing medical estimate),
- transportation costs,
- exceptional actual expenses, such as expenses incurred by craftsmen or shopkeepers whenever they are obliged to hire replacement personnel.
79% of miscellaneous expenses are associated with the provision for third-party assistance before injuries stabilize.

- The average estimate of miscellaneous expenses quadrupled between 2005 and 2015 (288%), with an annual increase of +14.5%.
- This increase is largely due to the increase in third-party services before injuries stabilize, which account for 79% of miscellaneous expenses.
- Between 2005 and 2015, the hourly rate for "active" third-party assistance rose by +30%.
- Since 2015, the average number of hours of third-party assistance before injuries stabilize has been: 10 hours of "active" assistance and 13 hours of "passive" assistance.

**Development of average estimate (in euros) of third-party assistance before injuries stabilize**

**Breakdown of miscellaneous expenses**

**Average estimate (in euros) of third-party assistance before injuries stabilize by type of injury**

*These figures do not include expenses relating to the actual adaptation of a vehicle or of the home.*
> Compensation estimates

Actual **medical expenses** and future medical expenses

- The "medical expenses" heads of loss compensate all hospital, medical, paramedical and pharmaceutical expenses (nurses, physical therapy, orthoptics, etc.), prostheses, medical devices, etc.
- These expenses may be actual (before injuries stabilize) or future (after injuries stabilize). Future expenses may be temporary expenses (i.e. one-off expenses or expenses paid for a limited time) or lifelong expenses.

**Actual medical expenses** account for 9% of the total estimate

- 81% of actual medical expenses compensate the victim’s hospitalization costs; 51% of these expenses are for intensive care.
- Between 2005 and 2015, the average estimate of actual medical expenses increased by 64%, i.e. +5.1% each year.

![Breakdown of Actual Medical Expenses](image)

- 81% Medical and pharmaceutical expenses
- 15% Hospitalization
- 4% Temporary placement
**Future medical expenses** account for 10% of the total estimate

- 33% of the estimate of future medical expenses compensate the costs of lifelong placement. These expenses vary by geographical area, depending on the subsidies granted by regional authorities and other bodies.
- Between 2005 and 2015, future medical expenses increased by **+6.7% per year**.

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**Actual and future loss of earnings**

The "loss of earnings" heads of loss compensate the victim's **losses or decreases in income** due to:
- his/her temporary disability (actual losses in income).
Actual losses in income therefore comprise economic losses sustained by the victim during the period of temporary disability (from the accident date to the date on which injuries stabilize).
- or his/her permanent disability (future losses in income).
Future losses in income therefore comprise economic losses consecutive to the victim's permanent disability (from the date on which injuries stabilize).
- These losses may be due to the loss of employment or the fact that the victim is only able to work part-time.
**Losses in income** account for 10% of the total estimate

- Between 2005 and 2015, loss of earnings estimate, both current and future, increased by 101%, i.e. nearly **+7.2% per year**.
- Due to their higher annual incomes, managerial employees receive compensation that is up to two times higher than that of employees in other employment categories.
Professional impacts

- The “professional impacts” head of loss supplements compensation for future loss of earnings by compensating the impacts of losses that the victim sustains due to:
  - his/her reduced value in the employment market,
  - his/her loss of professional opportunities (loss of the opportunity to access better paid jobs),
  - increased hardship in performing his/her job,
  - having to abandon the profession he/she practiced before the injury and seek another profession due to his/her disability.

- Professional impacts also compensates expenses incurred for:
  - the adaptation of an employment situation or a change of job,
  - training.

- Lastly, professional impacts seeks to compensate retirement losses, i.e. the impact that future income shortfalls due to the accident will have on the amount of the pension the victim will be able to claim at the time of retirement.

Professional impacts accounts for 1% of the total estimate

- Professional impacts accounts for 1% of the victim’s total loss.

- 58% of the professional impacts estimate compensates lost career opportunities. According to jurisprudence and in order to be compensated, the loss of an opportunity to access a higher paid job must be of a serious and sufficiently established nature; compensation may only represent a fraction of income expectations.

- 15% of the professional impacts estimate compensates a retirement loss whenever the victim is forced to take early retirement as a result of the accident, while the expense of his/her loss has not as yet been definitively established.

It should be noted that expenses relating to professional rehabilitation (retraining courses, professional training), to employment adaptation or to a change of employment account for only 10% of the professional impacts estimate.

Lastly, the professional impacts head of loss may be artificially increased due to a tendency among insurers to include future losses in income in this head of loss.
Housing adaptation expenses and vehicle adaptation expenses

The victim’s home and vehicle may be adapted temporarily (before injuries stabilize) and/or permanently (after injuries stabilize) to provide the victim with a suitable home and means of transport given his/her traumatic illness or disability.

Expenses for actual adaptations are included in the “miscellaneous expenses” head of loss.

The “housing adaptation expenses” and “vehicle adaptation expenses” heads of loss apply only to the reimbursement of expenses of adaptations made to an existing home or vehicle or the additional cost of acquiring a better adapted home or vehicle.

Housing adaptation expenses also include moving out and moving in expenses, as well as the costs of a necessary structure that provides the victim with an external living space other than his/her customary home, such as a medical-care center or home.

Housing and vehicle adaptation expenses account for 2% of the total estimate

Housing and vehicle adaptation expenses account for 2% of the total estimate of the victim’s losses.

Since 2005, the average estimate of housing adaptation expenses has been € 110,000.

Victims of tetraplegia and those in a vegetative state receive the highest amounts of compensation under the “housing adaptation expenses” head of loss: € 150,341 for victims in a vegetative state and € 150,763 for tetraplegia victims. Cranial trauma victims without motor disabilities require lower housing adaptation expenses.

**Average estimate (in euros) of housing adaptation expenses by type of injury**
Permanent \textit{functional impairment}

- The “permanent functional impairment” head of loss is a permanent non-economic loss head of loss that compensates physical and psychological injuries to the victim, that are medically observed after injuries stabilize, and that affect \textit{solely} “physiological/functional” abilities.

- The rate of permanent functional impairment is assessed by the medical expert. The rate of permanent functional impairment corresponds to the loss of quality of life and suffering for the period after injuries stabilize, as well as living condition problems (personal, family-related and social difficulties) resulting from physical and psychological injuries.

Permanent functional impairment accounts for 7\% of the total estimate

- Permanent functional impairment accounts for 7\% of the victim’s total loss.
- The average estimate of permanent functional impairment has risen 35\% since 2005, i.e. \textbf{+3.1\% per year}.
- Compensation provided for permanent functional impairment is calculated by multiplying the AIPP rate (determined by the medical expert) by the AIPP point value established by the Court of appeal, adjusted with consideration for the victim’s age and rate of functional impairment.

\textbf{Example}: For a 28-year-old victim with an AIPP rate of 80\%, the point value (e.g. 5,830) is multiplied by 80 to obtain € 466,400.

The average AIPP rate for severe bodily injured victims has remained stable since 2005.

\begin{figure}
\centering
\includegraphics[width=\textwidth]{development_of_average_aipp_rate}
\caption{Development of average AIPP rate}
\end{figure}
Since 2005, the average estimate of permanent functional impairment for victims in a vegetative state has been € 416,308.

Since 2005, the average estimate of permanent functional impairment has been substantially similar for men and women.

The average estimate of permanent functional impairment for victims of all ages (for all types of injuries) is:
- € 316,609 for a woman.
- € 316,051 for a man.

This average estimate falls with the victim’s age.
Compensation estimates

Other **non-economic losses**

**TEMPORARY**

- Temporary functional impairment compensates for the impact of the victim’s temporary disability on his/her personal life and his/her loss of quality of life and deprivation of the usual enjoyment of day-to-day life.
- Pain and suffering compensates physical and psychological suffering and associated disorders from the date of the accident until the date on which the injuries stabilize.
- Temporary aesthetic loss compensates temporary alterations to the victim’s physical appearance.

**PERMANENT**

- Permanent aesthetic loss compensates alterations to the victim’s appearance.
- Loss of amenity compensates the impossibility for the victim to regularly practice a specific sport or engage in a specific recreational activity.
- Loss of sexual function compensates losses affecting the victim’s sex life.
- Deprivation of family life compensates the loss of hope, opportunity or possibility of having a “normal” family life due to the severity of the disability.
- Extraordinary permanent losses compensates unusual losses.
- Losses associated with progressive pathologies compensate living condition problems generated by an illness contracted as a result of contamination (HIV, hepatitis C, Creutzfeldt-Jakob disease, asbestos, etc.).
The average estimate of temporary non-economic heads of loss has increased by 5.1% per year.

- Between 2005 and 2015, estimate of temporary non-economic losses increased by 64%, i.e. nearly +5.1% per year.
- This increase may be primarily due to 2 new heads of loss derived from the Dintilhac classification:
  - The addition of temporary aesthetic loss.
  - The expansion of the temporary functional impairment head of loss (which includes various former heads of loss, such as temporary total disability, difficulties in everyday activities and living condition problems).
- Conversely, between 2005 and 2015, the estimate of permanent non-economic losses fell by 2.7%.
Temporary functional impairment accounts for 24% of the victim's total non-economic losses (excluding permanent functional impairment).

The breakdown of the various non-economic heads of loss, other than permanent functional impairment, is fairly uniform.

This confirms that a significant share of compensation is for temporary functional impairment (24%) and pain and suffering (21%). Moreover, temporary aesthetic loss, the new head of loss derived from the Dintilhac classification, accounts for only 2% of the average cost of non-economic losses.

### DISTRIBUTION OF NON-ECONOMIC LOSSES

<table>
<thead>
<tr>
<th>Temporary functional impairment</th>
<th>24%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pain and suffering</td>
<td>21%</td>
</tr>
<tr>
<td>Loss of amenity</td>
<td>17%</td>
</tr>
<tr>
<td>Loss of sexual function</td>
<td>13%</td>
</tr>
<tr>
<td>Permanent aesthetic loss</td>
<td>12%</td>
</tr>
<tr>
<td>Deprivation of family life</td>
<td>9%</td>
</tr>
<tr>
<td>Temporary aesthetic loss</td>
<td>2%</td>
</tr>
<tr>
<td>Extraordinary permanent losses</td>
<td>2%</td>
</tr>
</tbody>
</table>

### Average Estimates (in euros)

#### Pain and suffering

<table>
<thead>
<tr>
<th>Rating on a scale of 0 to 7</th>
<th>Average estimate (in euros)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/7</td>
<td>30,745</td>
</tr>
<tr>
<td>6/7</td>
<td>41,351</td>
</tr>
<tr>
<td>7/7</td>
<td>82,534</td>
</tr>
</tbody>
</table>

#### Permanent aesthetic loss

<table>
<thead>
<tr>
<th>Rating on a scale of 0 to 7</th>
<th>Average estimate (in euros)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/7</td>
<td>29,395</td>
</tr>
<tr>
<td>6/7</td>
<td>38,675</td>
</tr>
<tr>
<td>7/7</td>
<td>40,444</td>
</tr>
</tbody>
</table>

#### Courts of Appeal 2013 reference data

<table>
<thead>
<tr>
<th>Rating on a scale of 0 to 7</th>
<th>Bracket (in euros)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/7</td>
<td>15,000 à 30,000</td>
</tr>
<tr>
<td>6/7</td>
<td>30,000 à 45,000</td>
</tr>
<tr>
<td>7/7</td>
<td>45,000 à 70,000</td>
</tr>
</tbody>
</table>

Pain and suffering and aesthetic loss are assessed by a medical expert on a scale of 0 to 7 depending on their respective severity. The average estimate of these heads of loss, depending on the medical-legal rating, falls within the higher bracket of the values included under the reference data published in 2013 by the Courts of appeal (data shared by all Courts of appeal).
Compensation estimates

Losses of indirect victims

The indirect victims (victim’s family circle or collateral) – who can prove an actual and affectionate shared life with the victim) are compensated for their economic losses:

- **Funeral expenses:** this head of loss compensates funeral and burial expenses that must be paid by the victim’s family circle in the event of the victim’s death as a result of the accident;
- **Miscellaneous expenses:** this head of loss compensates the direct victim’s family circle for miscellaneous expenses they incur as a result of the accident (transportation, lodging, meals, etc.);
- **Loss of income:** this head of loss compensates the reduction or loss of income sustained by the household of a deceased victim.

They are also compensated for their non-economic losses:

- **Loss of consortium** (if the victim survives): this head of loss compensates non-economic losses of the victim’s family until the victim’s death;
- **Loss of affection:** this head of loss compensates the loss of affection sustained by certain family members due to the direct victim’s death or the direct victim’s survival with a disability;
- **Extraordinary non-economic losses:** this head of loss compensates inter alia the change in living conditions suffered by the direct victim’s family circle during the victim’s survival with a disability.

Losses of indirect victims account for 2% of the total estimate

- 72% of the total estimate of indirect victims’ losses concerns non-economic losses such as loss of affection and loss of consortium.
- Only 16% of the estimate of indirect victims’ losses concerns the household’s loss of income resulting primarily from the death of the indirect victim.

![Breakdown of indirect victims' losses](image-url)
36% of **insurers incorporate an inflation rate** into their estimate

When discounting cash flows under heads of loss they expect to pay on the date the claim is settled, 36% of insurers incorporate an annual inflation rate until the anticipated claim settlement date.

- Some of these insurers apply this rate to all heads of loss.
- Others apply it only to certain heads of loss: future economic heads of loss or to third-party assistance only.
- Lastly, other insurers apply an inflation rate only to certain types of victims: depending on the victim’s age or the foreseeable date on which the victim’s injuries will stabilize.

**INFLATION COEFFICIENT TAKEN INTO ACCOUNT**

- **Yes 36%**
- **No 64%**

Most insurers that use this technique apply an annual rate of 2% until the anticipated claim settlement date.
Annuity or lump sum?

Indemnities that compensate future losses (medical expenses, third-party assistance, future loss of earnings, etc.) may be paid in the form of an annuity or lump sum.

The compensation method is decided not only by the victim and his/her lawyer, but also by the courts or the insurer.

For the insurer, each of these methods (annuity or lump sum) has advantages and disadvantages:

<table>
<thead>
<tr>
<th>Payment method</th>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annuity</td>
<td>Reduction in compensation costs in the event of the victim's premature death</td>
<td>Need to set up a system for monitoring annuities (payment, certificate that the beneficiary is alive, taxation, etc.) - Annuities Management Department</td>
</tr>
<tr>
<td></td>
<td>Payment of adjustments to annuities for accidents incurred prior to January 1, 2013</td>
<td>Claim not closed for accounting purposes</td>
</tr>
<tr>
<td></td>
<td>Non-payment of adjustments to annuities for accidents incurred after January 1, 2013</td>
<td></td>
</tr>
<tr>
<td>Lump sum</td>
<td>Claim closed (except in the event of an aggravation) for management and accounting purposes</td>
<td>No reduction in compensation costs in the event of the victim's premature death</td>
</tr>
<tr>
<td></td>
<td>Negotiation required of capitalization table to be applied</td>
<td></td>
</tr>
</tbody>
</table>

In its bodily injury compensation white paper, published in April 2008, the French Insurers’ Association (AFA) strongly recommended payment of annuities to victims, in particular for third-party assistance.
Discounting of **annuities**

To convert an annuity into lump sum for compensation or provisioning purposes, insurers use various scales, which simultaneously combine a mortality table and an interest rate. These elements vary depending on how compensation is paid:

<table>
<thead>
<tr>
<th>Payment method</th>
<th>Basis</th>
<th>Objectives of the capitalization table</th>
<th>Capitalization table</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annuity</strong></td>
<td>Article A. 331-10 of the French Insurance Code</td>
<td>Reserving</td>
<td>TD 88-90 at 60% of the average rate on government bonds with a max. of 3.5%. Application of an inflation rate of 2.5% for accidents incurred after January 1, 2013.</td>
</tr>
</tbody>
</table>
| **Lump sum**   | No official table for use in ordinary legal matters | Compensation and/or reserving | The 3 principal tables currently used in ordinary legal matters are:  
  • BCIV 2016: TH/TF 06-08 at 1.29%;  
  • Gazette du Palais 2013: TH/TF 06-08 at 2.35% or 1.20%;  
  • Gazette du Palais 2016: TD 06-08 at 1.04%.  
  Certain insurers also reserve on the basis of Article A 331-10 of the French Insurance Code. |

88% of insurers reserve using the **TD 88-90 mortality table**

- 88% of insurers assess heads of loss on the basis of the TD 88-90 life expectancy table, in accordance with Article A. 331-10 of the French Insurance Code.
- 2/3 of insurers apply the same rate to provision for permanent economic heads of loss.
80% of insurers reserve annuities on the basis of an **annual payment**

Depending on the terms of the settlement or court decision, annuities may be paid:

- Annually (1 payment/year): this is the insurers’ preferred frequency of payment and is used in 80% of cases;
- Quarterly (4 payments/year): insurers and victims also favor this frequency of payment which is used in 17% of cases;
- Monthly (12 payments/year): only 3% of situations.

The frequency of payment has a slight impact on the final cost of the claim, as shown in the example below:

<table>
<thead>
<tr>
<th>Payment frequency</th>
<th>Lump sum required to constitute an annual lifetime annuity of €100,000 discounted at 3.5% for a 35-year-old victim (TD 88/90)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>With no retention (in euros)</td>
</tr>
<tr>
<td>Annual</td>
<td>2,031,000</td>
</tr>
<tr>
<td>Quarterly</td>
<td>2,068,000</td>
</tr>
<tr>
<td>Monthly</td>
<td>2,077,000</td>
</tr>
</tbody>
</table>
97% of insurers pay **annuities in arrears**

- The term of the annuity corresponds to the point at which the annuity is paid during the period:
  - Payment is made “in arrears” if it is made at the end of a period;
  - Payment is made “in advance” if it is made at the start of a period.

- The payment term of the annuity has a slight impact on the final cost of the claim, as shown in the example below:

<table>
<thead>
<tr>
<th>Payment term of the annuity</th>
<th>Lump sum required to constitute an annual lifetime annuity of € 100,000 discounted at 3.5% for a 35-year-old victim (TD 88/90)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>With no retention (in euros)</td>
</tr>
<tr>
<td></td>
<td>With a retention of € 1 million</td>
</tr>
<tr>
<td>In arrears</td>
<td>2,031,000</td>
</tr>
<tr>
<td>In advance</td>
<td>2,131,000</td>
</tr>
<tr>
<td></td>
<td>+4.92%</td>
</tr>
<tr>
<td></td>
<td>+9.69%</td>
</tr>
</tbody>
</table>

**BREAKDOWN OF CEDENTS BY TERM**

- In arrears: 97%
- In advance: 3%